

## **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
. .  
MAXUS ENERGY CORPORATION, .  
*et al.*, . Case No. 16-11501 (CSS)  
. .  
. Courtroom No. 6  
. 824 Market Street  
. Wilmington, Delaware 19801  
. .  
Debtors. . October 19, 2016  
. . 11:00 A.M.  
. . . . .

TRANSCRIPT OF HEARING  
BEFORE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Joseph Barry, Esquire  
YOUNG CONAWAY STARGATT & TAYLOR LLP  
1000 North King Street  
Wilmington, Delaware 19801

James Peck, Esquire  
Jordan Wishnew, Esquire  
J. Alexander Lawrence, Esquire  
MORRISON & FOERSTER LLP  
250 West 55th Street  
New York, New York 10019

ECRO: LESLIE MURIN

Transcription Service: Reliable  
1007 N. Orange Street  
Wilmington, Delaware 19801  
Telephone: (302) 654-8080  
E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording:  
transcript produced by transcription service.

1 APPEARANCES (Continued):

2 For U.S. Trustee: Linda Casey, Esquire  
3 UNITED STATES DEPARTMENT OF JUSTICE  
4 Office of the United States Trustee  
844 King Street, Suite 2207  
Wilmington, Delaware 19801

5 For YPF SA Entities: Howard Seife, Esquire  
6 CHADBOURNE & PARKE LLP  
1301 Avenue of the Americas  
New York, New York 10019-6022

7 For the Committee: Adam Harris, Esquire  
8 SCHULTE ROTH & ZABEL LLP  
9 919 Third Avenue  
New York, New York 10022

10 For Occidental Chemical Corporation:  
11 Christopher Shore, Esquire  
WHITE & CASE LLP  
12 1155 6th Avenue  
New York, New York 10036

13 Kathy Patrick, Esquire  
14 GIBBS & BRUNS LLP  
1100 Louisiana, Suite 5300  
Houston, Texas 77002

15 For Ashland Entities: Natasha Songonuga, Esquire  
16 William Hatfield, Esquire  
GIBBONS P.C.  
17 300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801-1058

18 For Lower Passaic River Study Area:  
19 Charles Dale, III, Esquire  
K&L GATES LLP  
20 State Street Financial Center  
One Lincoln Street  
21 Boston, Massachusetts 02111-2950

INDEXPageNOTICE OF AGENDA MATTERS:

For the Debtors, by Mr. Barry	4
For the U.S. Trustee, by Ms. Casey	7
For the Debtors, by Mr. Peck	20
For YPF SA Entities, by Mr. Seife	24
For the Committee, by Mr. Harris	26
For Occidental Chemical, by Mr. Shore	30
For the Debtors, by Mr. Wishnew	48
For Occidental Chemical, by Ms. Patrick	51
For Ashland Entities, by Ms. Songonuga	52
For Ashland Entities, by Mr. Hatfield	53
For Lower Passaic River Study, by Mr. Dale	55
For the Debtors, by Mr. Alexander	56

1 (Proceedings commence at 11:00 a.m.)

2 (Call to order of the Court)

3 THE COURT: Please be seated.

4 MR. BARRY: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. BARRY: Joseph Barry of Young Conaway Stargatt  
7 & Taylor on behalf of the Debtors.

8 Your Honor, this is our regularly scheduled  
9 omnibus hearing. We have a pretty hefty agenda today, Your  
10 Honor. So unless you have any thoughts to the contrary I'd  
11 like to dive right in.

12 THE COURT: That's fine.

13 MR. BARRY: We do have some -- there is some  
14 movement on some of these items, but we'll get to those as we  
15 move through the agenda, Your Honor.

16 Items 1 and 2 Your Honor has entered orders on and  
17 we thank you for that. Item 3 is our KEIP motion. Your  
18 Honor, we just wanted to thank the Committee and the U.S.  
19 Trustee for working through all of their issues on that  
20 motion such that it could be approved under certification of  
21 counsel yesterday and we thank Your Honor for entering that  
22 without the need for a hearing.

23 Your Honor, the next item is the Debtors' motion  
24 seeking to approve the sealing of certain of private home  
25 addresses of its employees and retirees. So, Your Honor,

1 this came up in the context of the Debtors' 341 meeting when  
2 the Debtor had filed its schedules and sofas. We redacted  
3 the private home addresses of their employees and retirees;  
4 citing, in the global notes, privacy concerns. We also noted  
5 that --

6 THE COURT: We used to have these things call  
7 phonebooks that your address was in and it was publicly  
8 available to the world and all you had to do was look up the  
9 name, you could find out where people lived and nobody died  
10 as a result of phonebooks.

11 MR. BARRY: Understood, Your Honor, but this is  
12 exactly the kind of information that Section 107(c) covers.  
13 107(c) --

14 THE COURT: Addresses?

15 MR. BARRY: It does, actually, Your Honor. 107(c)  
16 allows the Court to protect a means of identification if it  
17 would pose a threat to identify theft; and means of  
18 identification is defined by:

19 "Any name or number that may be used alone or in  
20 conjunction with any other information."

21 And here any other information is actually two  
22 things; it's their home address and it's their identification  
23 as an employee or as a retiree.

24 To your point, Your Honor, with respect to the  
25 white pages we actually did a couple of small research

1 projects and spot check to see how easy it would be to locate  
2 the home addresses for these people using just their names  
3 and it was actually quite difficult. We took one step  
4 further and did a secondary research project to determine,  
5 using just the state in which you could glean that these  
6 employees resided. So New Jersey, for example, or Texas, for  
7 example. Again, given the vast amount of information that's  
8 out there it's not as freely or exceedingly available as one  
9 would think.

10 So, Your Honor, our view is similar to that of  
11 Judge Gross. He has a recent decision, oral ruling if you  
12 will --

13 THE COURT: Yeah, Judge Silverstein went the other  
14 way though just last week I believe.

15 MR. BARRY: Fair enough. So we have at least one  
16 Judge on either side of this, but one point we did make in  
17 our papers, Your Honor, is the situation you faced in the Wet  
18 Seal case. As you may remember this is a situation where a  
19 third party filed fraudulent notices of change of address for  
20 two creditors. Your Honor called that fraudulent. You  
21 referred it to the U.S. Attorney's office.

22 So we actually did a little digging in connection  
23 with this motion and found out that this person is actually  
24 still at it. So in connection with -- since your ruling in  
25 August of 2015 that party has filed similar papers in 16

1 bankruptcy cases around the country including eight in this  
2 jurisdiction. The reason I raise that, Your Honor, is  
3 because it seems to me that that is a real identifiable  
4 threat of identity theft that's ongoing and occurring in this  
5 Court. And weigh it against the relative importance of this  
6 information these are employee and retiree home addresses.

7           They have little to no significance to the overall  
8 restructuring effort. We will give them notice as required  
9 to their home addresses. Again, we just don't want to expose  
10 them to any undue risk of identity theft. And we think that  
11 given what Your Honor dealt with in Wet Seal and the fact  
12 that that is still occurring in this jurisdiction even after  
13 a referral was made to the U.S. Attorney that that militates  
14 in favor of confidentiality.

15           THE COURT: Okay.

16           MR. BARRY: Thank you, Your Honor.

17           THE COURT: You're welcome.

18           MS. CASEY: Good morning, Your Honor, Linda Casey  
19 on behalf of the U.S. Trustee.

20           Your Honor, the U.S. Trustee has seen a larger  
21 number of creditors coming in and either filing their  
22 schedules and statements with redacted information or seeking  
23 to seal this information. The code and the rules require the  
24 identity and the addresses of the creditors to be disclosed.  
25 We start with the principle that the Courts are an open

1 process that the public should have the right to information  
2 for. Section 107 provides that certain information can be  
3 redacted for cause.

4           There are two issues with the present motion. The  
5 first is, as Your Honor pointed out, addresses are not the  
6 kind of information that are means of identification that  
7 107(c) seeks to protect. The means of identification that  
8 107(c) seeks to protect are those laid out in 18 U.S.C.  
9 Section 1028(d) which does not include the physical address;  
10 it does include IP address, it does include account numbers,  
11 social security numbers, it includes names, but it does not  
12 include the physical address.

13           In fact, as Your Honor pointed out, it is easy to  
14 get the white pages, whitepages.com, now. If there are  
15 physical white pages list addresses, deed records list  
16 addresses. And, although, we heard from counsel that it was  
17 difficult we don't have a declaration or any facts. I looked  
18 myself up and I was able to find my address very easily.

19           The second important part is what's the cause?  
20 The cause here is this amorphous generic threat of identity  
21 theft. And when you weight it against what the purpose is,  
22 the purpose is there needs to be transparency and disclosure.  
23 And there are a lot of people who might want the addresses.  
24 It's not just for service. The press might be interested in  
25 contacting these people, attorneys might be interested in

1 contacting these people and the employees might have an  
2 interest in having the attorneys contact these people, other  
3 creditors may be interested in contacting them, there may be  
4 a desire to put together an Ad Hoc Committee, there may be a  
5 desire to find out what's happening with your claim and these  
6 addresses are important for many people.

7           On the flipside they're saying, but there's this  
8 amorphous generic threat of identity threat. That's in every  
9 case for every individual for every corporation. The example  
10 they use, the Wet Seal case, this individual, who's only one  
11 individual, was not targeting individual creditors, they were  
12 targeting corporate creditors. There is certainly -- I think  
13 it would be hard-pressed for a Debtor to come in and say we  
14 should be able to redact the addresses of our corporate  
15 creditors because this one individual is going around and  
16 putting in notices of change of address, and that's the only  
17 alleged fact they have here.

18           When you weight the interest in the public and  
19 disclosure versus this amorphous threat they have not  
20 established cause to reject home addresses which are A) not  
21 the kind that Congress intended to protect and B) they  
22 haven't established cause. The U.S. Trustee does acknowledge  
23 that if it were put on the claims agent website then perhaps  
24 it's open to everybody who has an interest address worldwide.  
25 And I don't see there's any reason why they couldn't not put

1 them or put a redacted version on the claims agent website,  
2 but putting it on the Court docket, where its required, and  
3 serving it to the creditors and other parties in interest who  
4 require it there needs to be a greater showing of cause then  
5 just someone might use this.

6           The schedules requires the names and addresses to  
7 be disclosed. The bankruptcy code does not provide that  
8 addresses are the types of information that can be redacted.  
9 They haven't shown cause and here we do have a high level of  
10 public disclosure in the Bankruptcy Courts. So, therefore,  
11 we would ask that the motion be denied.

12           THE COURT: Thank you.

13           MR. BARRY: Your Honor, just three points. First,  
14 I think every harm is generic and amorphous until it occurs.  
15 What 107(c) is intended to do is to actually prevent that  
16 from occurring. As a dovetail to that, Your Honor --

17           THE COURT: Yeah, but how do you deal with the  
18 fact that, you know, it's specifically required that the  
19 addresses be provided. So you've got, perhaps, a conflict  
20 here, but, you know, you've got a specific requirement in the  
21 code that says that the schedules should contain this  
22 information. 107(c) doesn't specifically -- I mean its broad  
23 language, but it doesn't specifically address what's,  
24 otherwise, specifically required in another section of the  
25 code. So you've got a conflict where you've got a specific

1 requirement and a general exception and doesn't the specific  
2 govern over the general. In that situation it's a question  
3 of statutory interpretation.

4 MR. BARRY: Your Honor, on that point the Third  
5 Circuit Court of Appeals has, in a non-presidential opinion,  
6 actually identified address as one of the items that is  
7 included in other information for purposes of this statute.  
8 So 18 U.S.C. 1028(d) is what we are talking about here. It  
9 provides that:

10 "A means of identification is any name that may be  
11 used alone or in conjunction with any other  
12 information to identify a specific individual  
13 including, in sub-section 7(c), address."

14 The Third Circuit Court of Appeals, again, in an  
15 un-presidential opinion, said that address means mailing  
16 address. In this specific case it was used to convict a  
17 criminal who used the name of an actual person and that  
18 actual person's home address in a counterfeit check scheme.  
19 The Third Circuit Court of Appeals -- again, I want to make  
20 sure I'm clear. This is a non-presidential opinion, but it  
21 goes into deal. It says:

22 "A mailing address can constitute means of  
23 identification for purposes of 18 U.S.C. 1028(d)."

24 So that may or may not resolve it for purposes of  
25 the perceived conflict, but the actual language of the

1 statute, I think, permits this. Its two things. It's not  
2 just address. It's also their identification as an employee  
3 or as a retiree which may or may not make them more  
4 susceptible to identify theft as an individual.

5           The second point is the difference between a  
6 corporate creditor and an individual creditor. We think that  
7 that militates in favor of protecting the individual. It's  
8 certainly not true of every instance, but I would think  
9 generally the financial burden that would be imposed on an  
10 individual, particularly here rank and file employees, having  
11 their identity stolen as a result of a bankruptcy case that  
12 they didn't consent to the disclosure of their information  
13 would be more impactful than that on a corporate creditor.

14           The final point, Your Honor, with respect to the  
15 formation of a Committee we would let the Trustee know that  
16 we were in any instance of a formation of an Ad Hoc or other  
17 committee work with them to get this information provided.  
18 It was kept confidential in accordance with what we hope Your  
19 Honor will do, which is to enter a seal order.

20           Your Honor, the case that I was referring to is  
21 called US vs. Graham 46 Fed. Rep. 265. So with that, Your  
22 Honor, again, we actually -- this wasn't cited in our papers,  
23 it was something we just found, but the Third Circuit Court  
24 of Appeals, again, has specifically found in a non-  
25 presidential opinion that home mailing address does

1 constitute the type of information that's a means of  
2 identification for purposes of 18 U.S.C. 1028(d).

3 THE COURT: Well, I mean there's no question that,  
4 you know, name plus address is more valuable for identity  
5 theft purposes than name. There is a line drawing problem  
6 here. Identity theft is a very serious and important issue.  
7 Actually, as a victim of it last year when someone filed a  
8 fraudulent tax return and I still don't have my refund  
9 because the IRS is still working through this nine months  
10 later I take it very seriously.

11 The problem I'm having is if we're talking about  
12 social security numbers or, you know, birthdays your, sort  
13 of, a step further. But the problem I'm having is there's  
14 nothing in the statute that says you have to disclose that  
15 information; whereas, it says you have to disclose addresses.  
16 So I'm struggling between this fact where I've got something  
17 that specifically says I have to do addresses even though  
18 putting the name in the address clearly makes it more likely  
19 than just the name in order to allow people to perform  
20 identity theft on these people; albeit, perhaps, not much  
21 because as Ms. Casey said I dare say if everybody in this  
22 room got on whitepages.com and put their name, in  
23 whitepages.com they would get a whole list of people with  
24 that name. If Your Sontchi there aren't many and they would  
25 have addresses and telephone numbers. I mean it is publicly

1 available information. You're not seeking to redact the  
2 names of the employees and the retirees, right, just the  
3 address or have I got that wrong?

4 MR. BARRY: Well, that's right and that's why this  
5 falls under 107(c) because what 107(c) requires is name and  
6 any other information. Again, I think it's important to  
7 note, Your Honor, that it's not just their addresses. It's  
8 actually name, address and the name of their employer.

9 Now, I don't know much about identity theft, but I  
10 imagine that having someone's name and home address is  
11 meaningful to someone that would attempt to steal someone's  
12 identity, but I think knowing their employer is probably more  
13 meaningful and probably better information which is disclosed  
14 on our schedules. We have the name, we have the fact that  
15 they're an employee or retiree of one of the Maxus Energy by  
16 Debtor. All we're asking to do is holdback that one piece of  
17 information that could ostensibly link the two together to  
18 make it greater information.

19 So, again, we think that that's really the  
20 critical piece. It's not just the addresses. It's the fact  
21 that we get two critical pieces of information; the fact that  
22 they're employees of Maxus and their names. We just don't  
23 want that one link that's in the middle that will,  
24 potentially, give away critical information.

25 I think the last thing is, Your Honor, the Trustee

1 accused us of being cavalier about our disclosure  
2 obligations. Again, saying that its only one person that's  
3 perpetuating an ongoing fraud in this Court by stealing  
4 identities of corporate Debtors seems a tad cavalier to me.  
5 I mean, this presents a real risk to folks. Again, it's  
6 ongoing; notwithstanding a referral to the U.S. Attorney. I  
7 think, in my mind, that takes this from what Ms. Casey called  
8 the amorphous threat to the actual threat.

9 THE COURT: All right. Well, while I'm aware of  
10 that situation, not to put too fine a point on it, I don't  
11 actually have any evidence that that's occurring. I don't  
12 have any evidence to back up the statements that you've made.  
13 I don't have any evidence to back up the statements I've  
14 made.

15 MR. BARRY: You asked for it, Your Honor.

16 THE COURT: Okay. Well, if you've got evidence  
17 now's the time. It's a contested motion.

18 MR. BARRY: What I would say, Your Honor, is,  
19 obviously, I don't have a witness. These are documents that  
20 have been filed on the dockets of cases in Delaware and  
21 around the country. Your Honor was presented with some of  
22 these in the context of the hearing in the Wet Seal case.

23 THE COURT: Yeah, was that Wet Seal?

24 MR. BARRY: Seal 123, I think, it was subsequently  
25 called.

1 THE COURT: Yeah.

2 MR. BARRY: And what we have here is, that stack  
3 including, the some 16 additional filings that we found since  
4 your ruling in August of 2015. I don't think we need a  
5 witness to admit these into evidence. I think Your Honor can  
6 simply take judicial notice that these have been filed,  
7 they're stamped by each of the respective Courts, simply as  
8 proof that the person that you had referred to the U.S.  
9 Attorney continues to file papers and bankruptcy cases around  
10 the country. I don't think that we need a foundation for  
11 that because I don't think those are adjudicative facts. I  
12 think you're just taking judicial notice of the fact that a  
13 Court accepted a filing by what seems to be that same person.

14 THE COURT: All right. Well, you can certainly  
15 approach.

16 MR. BARRY: Your Honor, I'll admit, this is just a  
17 stack of the filings. If Your Honor wants them organized in  
18 some way we are happy to submit supplemental briefing.

19 THE COURT: This person's central European  
20 distribution. Good lord. This person is very busy and I  
21 think it's because he's currently incarcerated and needs  
22 something to do in his free time.

23 MR. BARRY: He must have quite a hand cramp, Your  
24 Honor, because these are all handwritten.

25 THE COURT: All right. Ms. Casey.

1 MS. CASEY: Your Honor, first this is not a proper  
2 request for judicial notice. I'm not going to stress that  
3 too much. The question of this individual -- first of all,  
4 its one individual filing handwritten notes and mostly with  
5 corporate entities. So if this is sufficient information to  
6 redact the addresses of the individual employees it's also  
7 sufficient to redact the addresses of all of the creditors in  
8 every case in Delaware because of this gentleman. I don't  
9 think that's sufficient.

10 The question regarding the Third Circuit case, I  
11 just want to briefly go over that. It's non-presidential. I  
12 haven't read it, but 1028(d)(c), and I don't have the exact  
13 words here, talks about electronic and IP addresses. It does  
14 have a comma in between IP and electronic; so addresses is on  
15 its own, but it is a section that's discussing IP and  
16 electronic addresses. That makes sense because those are not  
17 publicly filed information such as your social security  
18 number, your account number, your IP address, your electronic  
19 address, something like that that's not publicly available;  
20 your addresses are.

21 The fact is that there already is two pieces of  
22 information; the name and the employer that is disclosed.  
23 It's the address that they're seeking to redact. The address  
24 is important for notice purposes. It's important for people  
25 to determine whether notices be sent and certificate of

1 services. It's important for parties who wish to contact  
2 these employees. There has been no record made today of a  
3 real risk to go beyond what 1028(d) does and protect  
4 addresses which are A) publicly available and B) mandated to  
5 be discloses in these cases.

6 THE COURT: All right. Thank you.

7 All right. I'm going to deny the motion to  
8 sustain the U.S. Trustee's objection. I do take this matter  
9 very seriously, but I think that it's a line drawing  
10 question. The reality is there is a specific requirement to  
11 list name and address of the creditors. While 107 exists to  
12 protect against, among other things, identity theft and the  
13 confidentiality what we don't have is that next step that  
14 isn't specifically required by the statute where were dealing  
15 with social security numbers which, of course, would not  
16 happen.

17 We're not revealing bank account numbers. We're  
18 not revealing email addresses. We're not revealing other  
19 information, credit card numbers, etc., that would very much  
20 result in a high risk of identity theft which is a very  
21 serious concern for the Court to protect innocent creditors  
22 from that occurring; however, I believe that while there is  
23 some marginal additional risk by associating the Debtors'  
24 name, the name of the person and their address as opposed to  
25 simply the name of the person and their affiliation with the

1 Debtors, I think that that marginal additional risk is not  
2 sufficient to trigger 107 over riding the specific  
3 requirement elsewhere in the code that that information be  
4 disclosed.

5           While I appreciate the presentation of these  
6 notices of both, it looks like, 2002 notices, but also  
7 notices of changes of address by Mr. Bassley (sp) who has  
8 continued to make a career out of this, I would note that I'm  
9 not sure that's sufficient evidence, but his focus has been  
10 on corporate creditors not individual creditors. While there  
11 is a general concern about corporate creditors versus  
12 employees or retirees, there is no specific evidence that  
13 would indicate there's an additional risk here that would  
14 give rise to a reason to overturn the specific requirement in  
15 the statutes.

16           So I appreciate and would follow-up with the U.S.  
17 Trustees comment which is that this not be disclosed on the  
18 claim agent website. Did I hear that correctly?

19           MS. CASEY: That's correct.

20           THE COURT: All right.

21           MR. BARRY: We will do that and work with them on  
22 a form of order, Your Honor.

23           THE COURT: Yeah, put that in a form of order.

24           Just so we're clear, I really am following, I  
25 think, what my colleague Judge Silverstein ruled last week in

1 a different case. I don't have the case name off the top of  
2 my head, but I did actually have a conversation with her  
3 about it. So I'm aware of the issue. I think she took the  
4 same approach and same ruling as I'm doing today. I think  
5 that's the appropriate way to go forward.

6 MR. BARRY: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. PECK: Good morning, Your Honor, James Peck of  
9 Morrison & Foerster for the Debtors.

10 The next item on today's calendar is the contested  
11 motion for an order extending the exclusive periods. I am  
12 pleased to report that an agreement, in principle, has been  
13 reached to resolve the motion. I want to provide a brief  
14 overview of status as to how we got here and also to, at some  
15 point before I sit down, introduce Howard Seife of Chadbourne  
16 who represents YPF and who has certain statements to make to  
17 the Court regarding the issue of corporate governance.

18 The motion to extent exclusivity was originally  
19 filed requesting 135 day extension consistent with a  
20 milestone date that is contained in the Debtor-In-Possession  
21 financing provided by YPF. We still think that is a  
22 reasonable extension for this case, but would note that  
23 issues surrounding the governance issues that I'll be  
24 describing in a moment have been difficult to resolve, time  
25 consuming, extremely sensitive and they are still an open

1 issue; although, one that I think is closer to final  
2 resolution as of today.

3           The agreement that has been reached, actually, is  
4 the product of extensive discussions that have occurred on  
5 several occasions between counsel for the Creditors  
6 Committee, Adam Harris who's here in the room, and myself.  
7 Shortly after the motion to extend exclusivity was served Mr.  
8 Harris contacted us and said that there would be consent to a  
9 60 day extension, but no more, and also raised some issues  
10 concerning the accelerated time table for developing a plan  
11 of reorganization.

12           We rejected, at the time, the 60 day extension,  
13 but stated that we were actively interested in pursuing plan  
14 discussions with the Committee and, in fact, general  
15 discussions along those lines have taken place including a  
16 meeting that took place on September 8th in our offices.  
17 That meeting was generally referenced during the last status  
18 conference that took place on September 7th. It was an all-  
19 day meeting. It involved individual members of the Creditors  
20 Committee and their counsel. And in the afternoon we had  
21 some, I'll call them, brainstorming sessions that were more  
22 informal with professionals for the Creditors Committee.

23           I can report, and I don't think this is  
24 controversial, that we have a very productive professional  
25 relationship between the Debtors' professionals and

1 professionals for the Committee. That's true of the  
2 financial advisors as well as counsel.

3           The issue which has been identified in the  
4 opposition papers filed by counsel for the Committee in a  
5 limited objection and by counsel for Occidental Chemical  
6 primarily relate to the fact that governance surrounding the  
7 Maxus board of directors remains an open issue. In the reply  
8 that was filed this week by counsel for YPF a representation  
9 was made that certain bylaws and corporate resolutions in a  
10 form acceptable to YPF in its capacity as equity holder would  
11 be distributed before today's hearing. In fact, those were  
12 distributed yesterday afternoon; regrettably too late for  
13 members of the board of directors of Maxus to consider those  
14 resolutions and to react to them.

15           The construct here is for the board of directors  
16 of Maxus, which includes three directors who are affiliated  
17 with or appointed by YPF, and two independent directors to  
18 establish bylaws that are more robust than those that are  
19 currently in place and that would delegate certain  
20 authorities within the bankruptcy case solely to the  
21 independent directors. We think we are making progress and  
22 based upon conversations immediately before today's hearing  
23 I'm not sure that the objectors agree that the progress is  
24 substantial enough, but we have managed to develop what I  
25 consider to be a workable reformulation of a proposed

1 resolution that appeared in the reply papers submitted by  
2 Maxus on Monday of this week.

3           In that original proposal we had suggested that an  
4 order be entered extending exclusivity for 90 days with the  
5 understanding that it would be shortened to 60 days if we  
6 were unable to resolve the governance issues that are still  
7 outstanding in a manner acceptable to all parties by November  
8 15th. In conversations immediately before today's hearing we  
9 have worked out, what I believe to be, an acceptable  
10 resolution that's a different version of what I've just said.  
11 Exclusivity would be extended by agreement for 60 days from  
12 the date of an order that you would be entering and there  
13 would be an ability to extend exclusivity for an additional  
14 30 days. So it would be a total of 90 days provided that  
15 parties in interest including counsel for the Debtor, counsel  
16 for the Committee and counsel for YPF were to stipulate to  
17 that extension.

18           Unstated in this is that there would be active  
19 negotiations and structuring discussions in reference to a  
20 plan of reorganization, and also active efforts on the part  
21 of all parties in interest to develop acceptable governance  
22 resolutions acceptable to the Maxus board. We're hoping that  
23 can take place within the very same timeframe originally  
24 announced; basically, between now and November 15th.  
25 Hopefully, it would happen sooner, but my understanding is

1 that the stipulation to extent for an additional 30 days is  
2 not directly tied to governance; although, an acceptable  
3 resolution of governance is assumed to be part of that  
4 stipulation.

5           It's also understood that this form of order would  
6 be without prejudice to the ability to the Debtors to file to  
7 a motion to extent exclusivity beyond 60 days even if the  
8 parties I've identified have not consented to the 30  
9 additional days and that the right to extend exclusivity  
10 would be beyond 90 days, consistent with our original request  
11 for 135 days. That is the basic understanding that we have.

12           I'd like to, with the Court's permission, simply  
13 turn the podium over to Howard Seife so that he can make some  
14 comments in reference to YPF's position on governance. Then  
15 I expect other parties who are involved in this will want to  
16 be heard.

17           THE COURT: Okay.

18           MR. PECK: Thank you.

19           MR. SEIFE: Good morning, Your Honor, Howard Seife  
20 from Chadbourne & Parke counsel for YPF SA.

21           I think Mr. Peck has done a good job of outlining  
22 the situation of where we are today. YPF acknowledges that  
23 governance changes need to be made and reflected in the  
24 bylaws. We have met with the Committee and we have discussed  
25 what those changes might be. That was some time ago and we

1 know the parties are frustrated that, perhaps, YPF hasn't  
2 responded in a concrete way as expeditiously as they would  
3 have hoped.

4           As Mr. Peck noted we did circulate, last night,  
5 propose amendments to the bylaws. They provide for greater  
6 powers to the independent directors and it provides three  
7 different buckets for dealing with corporate governance;  
8 items which are in the exclusive control of the independent  
9 directors, items that the independent directors would take  
10 the lead on, subject to ultimate full board consent and  
11 resolution, and the third items would be those in the bucket  
12 which the full board, ultimately, would have responsibility  
13 to approve.

14           We understand Committee counsel has some comments  
15 and reservations about the drafts. We have told them that we  
16 are prepared to meet with them and discuss them. We heard  
17 their concerns when we met with them and we're hopeful  
18 consensual resolution can be met. So we're pleased to report  
19 that.

20           There has been nothing nefarious here in the delay  
21 that has occurred in resolving this issue. YPF is a  
22 government instrumentality with the elections in Argentina.  
23 At the end of the year there were massive changes at YPF.  
24 There was a new board of directors, new CEO, new general  
25 counsel. So it's a process to educate new people at YPF as

1 to our Chapter 11 processes here and how we deal with issues  
2 like corporate governance, which we have frequently in  
3 complex Chapter 11 cases.

4           So I think the delivery last night of the revised  
5 bylaws was a big step forward. We look forward to further  
6 discussions with Committee counsel, Mr. Harris, and we're  
7 hopeful that we will be able to reach a resolution.

8           MR. HARRIS: Good morning, Your Honor, Adam Harris  
9 from Schulte Roth & Zabel on behalf of the Creditors  
10 Committee.

11           I to want to put this discussion into context,  
12 albeit from a slightly different perspective than what you've  
13 heard so far. Your Honor, you put basically this case into  
14 buckets of principle issues that need to be addressed. There  
15 is the settlement agreement which is, obviously, the  
16 centerpiece of the strategy here from the company's  
17 perspective and YPF's perspective and then there is  
18 everything else.

19           There are a series of other issues that have  
20 nothing to do with the settlement agreement which, frankly,  
21 were the subject of the meeting on September 8th. We wanted  
22 to understand what the other assets were, what the sale  
23 ability are, what the potential value there is, what the  
24 status of various litigations are that might result in  
25 affirmative recoveries for the benefit of the estate. We

1 needed to understand the company's pension liabilities and  
2 how those might be treated in part of a plan of  
3 reorganization. We, obviously, were very concerned about the  
4 ultimate transition of remediation projects for which Tierra  
5 is currently responsible; from Tierra to, whether it's, OCC  
6 or any other potentially responsible party under CIRCLA as  
7 part of the resolution of the case.

8           Frankly, Your Honor, when we looked at the key  
9 employee incentive plan that was first proposed by the  
10 Debtors in light of those other items we suggested to the  
11 company, in which they were very receptive to as it turns  
12 out, that they milestones for earning incentive payments  
13 under the KEIP should be very much directed towards  
14 resolution of all the other issues in this case over which  
15 they have responsibility.

16           So when you look at the KEIP, Your Honor, there  
17 are milestones tied to developing and implementing transition  
18 plans for remediation for those people within management who  
19 are responsible for dealing with those issues. There are  
20 milestones for earning incentive payments that are directed  
21 to completion of the pre-marketing sale process and ultimate  
22 sale of the Debtors' few remaining assets; whether it's the  
23 Neptune investments or whether it's the overriding royalty  
24 interests. There are incentive payments that are tied to  
25 developing a plan for dealing with the contaminated real

1 estate that Tierra still owns; whether it's through a sale  
2 process, an abandonment process or something else.

3 All of this, Your Honor, was dictated by the  
4 Committees' desire to move this case along because, frankly,  
5 when you cut right through it this case isn't that  
6 complicated. There are very few assets here. There are  
7 significant contingent liabilities. There is some litigation  
8 claims against third parties and in numerous other cases that  
9 Your Honor has overseen, the parties here have been involved  
10 with, you'd walk into Court and say this is what we got,  
11 we're going to put together a plan that creates some kind of,  
12 you know, liquidating trust or litigation trust, and dump the  
13 assets into that and we'll make distributions as and when  
14 money becomes available.

15 The only complicating factor in this case, Your  
16 Honor, is that it came either burdened by or benefited by  
17 this settlement agreement which, frankly, the company has  
18 agreed is going to be baked into and made a part of its plan  
19 of reorganization. The creditors aren't so sure that they  
20 want that. How we slot that in is really the only open issue  
21 here. The timing of it, whether it gets done independently  
22 as a 9019, whether it gets incorporated into the plan itself  
23 and becomes subject to voting requirements of a plan, whether  
24 we have a toggle plan that says if the settlement gets  
25 approved we go one way in terms of distributions, if it

1 doesn't those claims go to a litigation trust and we come out  
2 in a different form. Those are the issues that need to get  
3 dealt with, Your Honor, but they're not that complicated,  
4 frankly, at the end of the day.

5           The ability to move forward with them is dependent  
6 on having a receptive and unbiased counterparty to negotiate  
7 with which is why the corporate governance issues have been  
8 so important to us dating back to July 13th when we were  
9 here, Your Honor, and they first got raised, and the  
10 Committee took the position, frankly, in front of Your Honor  
11 that all case administration issues should be exclusively  
12 within the problems of the special committee and that anybody  
13 who sits on the board who is there at the behest of or at the  
14 request of YPF, other than the special committee members,  
15 shouldn't be involved. They just shouldn't be involved  
16 because, frankly, I can't see any circumstance under which  
17 any plan that gets done here isn't adverse in some way shape  
18 or form to YPF; even if it's a simple thing as cancelling  
19 their equity interest at the end of the day, but it's going  
20 to go deeper than that and I think its obvious to everybody.

21           That is what we have tried to clarify in these  
22 resolutions in the forms that, frankly, we revised and sent  
23 back to YPF and the Debtors in mid to late August. Despite  
24 numerous conversations that have been held, the first  
25 response we really got to that came through last night. So,

1 Your Honor, we said in our papers and we continue to believe  
2 this case needs to move along. We need to know sooner rather  
3 than later whether we've got somebody we can work with here  
4 or whether we need to go it our own way here.

5 We understand the implications of that, Your  
6 Honor, but if we can work through the structuring issues on  
7 the plan and get something that's approved by the company and  
8 we can all move forward on together that would be great, but  
9 I would like to know that sooner rather than later, as I  
10 said. We think that the 60 days will afford us that  
11 opportunity.

12 Your Honor, if you would like, I know it's been  
13 raised in the papers, I'm happy to give Your Honor an update  
14 on kind of where the Committees' investigation is relative to  
15 the settlement agreement, but I also want to give other  
16 parties the opportunity to speak to the exclusivity issue  
17 itself.

18 THE COURT: Yeah, I don't need that at this point.

19 MR. SEIFE: Okay. Thank you, Your Honor.

20 THE COURT: Thank you.

21 All right. Mr. Shore, good morning.

22 MR. SHORE: Good morning, Your Honor, Chris Shore  
23 from White & Case on behalf of OCC.

24 I have said to the Court before I have always,  
25 kind of, looked at exclusivity hearings as the opportunity to

1 educate the Court on what's going on in the plan process.  
2 What are people thinking? Are we going to get there in any  
3 time and what are the challenges facing us? I think the  
4 short answer to report to the Court now and the reason we  
5 asked for 60 days, and I think the reason the Committee asked  
6 60 days, we need another 60 days to kind of figure out are we  
7 really going to be heading towards a plan process, are these  
8 cases going to be forced into a conversion or is this just  
9 some kind of expensive theater that's going on, but isn't  
10 going to lead to any process in the Bankruptcy Court at all.

11           This case, I don't think anybody is going to  
12 dispute, started from a three party dispute. YPF, Maxus and  
13 OCC were involved in litigation in New Jersey. The Court  
14 needs to understand, be real about what people's real  
15 interests are here because there is a lot of rhetoric going  
16 back and forth about, you heard today, don't see this as  
17 nefarious; people are trying to get out in front of what  
18 people think their strategies are, but the strategies, I  
19 think, Your Honor probably already knows right what people's  
20 strategies are.

21           Let me lay out our view of it. YPF, it had its  
22 chance to settle bilaterally with OCC. That litigation was  
23 going on. There was a mediation. They chose not to go that  
24 route. YPF had its opportunity to litigate the claims in New  
25 Jersey. It decided it didn't want to litigate the claims and

1 cause the Debtors to file the bankruptcy proceeding on the  
2 eve of trial. YPF, clearly seeking an advantage in the  
3 bankruptcy process. There's nothing wrong with that;  
4 everybody is entitled to use the bankruptcy process to their  
5 advantage. They put independents in place. The independents  
6 were given the authority to analyze the claims and propose a  
7 settlement. The independents negotiated with YPF and YPF  
8 came in to an opening offer in that litigation.

9           This litigation, and this is important for why we  
10 care about the bylaws, this litigation was not over every  
11 issue. It was over a very discreet issue; whether between  
12 the time that YPF took control of the company in 2011, which  
13 was the discovery cutoff, whether or not YPF used its  
14 position on Maxus's board to adversely dominate the company  
15 in violation of the -- or in a manner that allowed for a  
16 piercing of the corporate veil. In other words, what were  
17 those YPF board members doing during that period that caused  
18 injury to the corporation?

19           YPF and the independents reached a settlement  
20 agreement and with that agreement in hand YPF had one goal.  
21 Mr. Seife has one goal; one for the barn and get that  
22 agreement done without OCC's input. They already know what  
23 OCC's view is of the likelihood that \$130 million dollar  
24 settlement is sufficient. So that's got to be their  
25 strategy; how do we get the settlement agreement with the

1 Debtors' approved without OCC's input.

2           What do the Debtors want? For us that raises the  
3 question of who the Debtors are which is why the bylaws  
4 matter to us. Each of the Debtors has a board of directors  
5 with six members; the two independents who were appointed to  
6 the boards the day of the filing except for Maxus when they  
7 came in months earlier and four YPF designees.

8           Two of the YPF designees, including the chairman,  
9 were involved in the actions complained of; that is that they  
10 assisted in the domination of the Debtors' board or in that  
11 case Maxus's boards when these transactions took place.  
12 Those boards now, all six members, have two jobs in this.  
13 One, stay out of Chapter 7 because if in the event of a  
14 Chapter 7 the decision as to whether or not to settle goes  
15 away from the boards and is handed to a Chapter 7 Trustee.  
16 Two, make sure that Occidental or any creditor as opposed to  
17 the settlement doesn't get a chance to vote on the settlement  
18 of YPF's claims because they already know that will not end  
19 well.

20           When you take those two considerations into mind,  
21 the Debtors' strategy don't convert to a 7 and don't let this  
22 go to a vote, you see what's happening in the case. Why is  
23 the 9019 filed outside of a context of a plan because it  
24 can't afford to put it in a plan. Why has the transition  
25 been so rocky? Why are we going in fits and starts? Why

1 isn't it all done now? Well, when everything is transitioned  
2 off there is not going to be an operational business that  
3 deserves to stay in 11. Why do we have tranche B loans? Why  
4 did the DIP lender agree to subordinate to everybody? That  
5 is purely to keep the EPA out of the case because if the EPA  
6 ordered Tierra to perform and YPF, as its owner, to see that  
7 performance was done it would be out of their hands.

8           Why do we have to keep coming back into Court to  
9 get information? I think this is just part of a strategy. I  
10 think they think that if YPF -- sorry, if OCC has to keep  
11 coming back in and filing things like Rule 2004 motions and  
12 asking for status conferences the Court is going to perceive  
13 us as the aggressor in the process and give them the benefit  
14 of the doubt. I don't know why they're running that strategy.

15           Why no plan negotiations with OCC? You'll note  
16 from their response they say they've been talking to the  
17 Committee. They have not talked to OCC. They already know  
18 that that's going nowhere, at least to the extent that what  
19 they want to do is seek OCC's support for a plan that  
20 includes the current YPF settlement. The biggest part, in  
21 our view, of the YPF dominated board strategy is to never,  
22 never let the creditors put a plan forward before that  
23 settlement gets up or down by the Court. They will not let  
24 that happen. They can't let that happen because the moment  
25 they let the creditors vote and the creditors say no that

1 strategy, that whole strategy that's been set up to run this  
2 through bankruptcy falls apart. That is why we have the  
3 current exclusivity dispute. The Debtors can't tolerate  
4 creditor suffrage on the settlement agreement that they put  
5 forward.

6 Now what do we want? I don't mean that to say in  
7 saying it's a three party dispute minimize all the other  
8 creditors, but the fact is, is that all the other scores of  
9 creditors who are here represented by the Committee including  
10 the Federal Government are collateral damage from the  
11 strategy that YPF put in place to try to isolate the  
12 environmental indemnification liability that Maxus had and  
13 the problem that's going on at Tierra with all of the cites  
14 for which they were a YPF derivative owner of.

15 So what do we want? I said at the beginning and  
16 I'm still clear first and foremost, and I hope Your Honor  
17 understands this, OCC's primary interest is in making sure  
18 that there is an efficient and effective handoff of the  
19 remediation cites. You can't overestimate the chaos that the  
20 Debtors have caused with their strategy of heading into  
21 bankruptcy without advising anybody of what was going on.  
22 That was critical to this process of trying to stop the  
23 litigation, would not tell anybody, not us, not the state  
24 regulators, not the federal regulators, not any of the trade  
25 that this thing was going to be going into bankruptcy. So we

1 spent the bulk of this case leading up to the services  
2 agreement, which is up this afternoon, in trying to stabilize  
3 the process and make sure that at the end of the day nothing  
4 is dropped. We can't, nobody, not us, not any of the other  
5 creditors, not the Court, and not the Debtors and not YPF can  
6 tolerate a cite falling through the cracks.

7           As I said OCC has even gone so far as to offer to  
8 pay just to get it done. We've had to actually pay to get  
9 information which was created under the assumption of defense  
10 that Maxus had under its prepetition agreement. Second, OCC  
11 wants a rational resolution of the YPF Legacy litigation.  
12 We've got very definitive views as a party who's been  
13 litigating as to a piece of that settlement.

14           What happened between 1996 and 2011, right,  
15 because we've been litigating that? We're in the process of  
16 looking at what happened between 2011 and 2016. In fact,  
17 nobody has looked at that. I think the Debtors will tell you  
18 they did not look, in their investigation, at a single  
19 document created after 2011 nor did they interview anybody  
20 about what happened from 2011 forward. So we're in the  
21 process, and that's what we're using the next 60 days for, of  
22 trying to figure out that in addition to the claims that  
23 existed what else exists out there.

24           Two, given that it is the target of the bankruptcy  
25 and is the largest creditor OCC wants a voice in the

1 resolution of the case. We're just going to fight to make  
2 sure that this gets run in a plan process subject to 1129.  
3 That is not wrong. We've got a lot of heat in the two  
4 replies about somehow that's bad that we want to voice in  
5 this, but recognize YPF's strategy was designed to isolate  
6 OCC. All of the other creditors during those years were paid  
7 off, including the funded debt claims, to make sure that  
8 there was never a creditor that went unpaid who could force  
9 this thing into bankruptcy. It's a little rich for the  
10 Debtors to be complaining that OCC's voice is loud in the  
11 case when they were the ones who made sure that OCC's voice  
12 would be the loudest voice in the case.

13           So what's the problem with just limiting to 60  
14 days a requested? I think they had offered two reasons. One  
15 is that we're a disgruntled litigant and you shouldn't listen  
16 to us at all. Here is the problem with the bylaws and why we  
17 make such a point about it. The claims being settled are  
18 that YPF, through its control, engaged in unjust behavior  
19 that's sufficient to pierce the corporate veil in Delaware.  
20 As I said, the current directors were engaged in the activity  
21 that leads to the conclusion of unjust activity. In fact,  
22 YPF thought the behavior was egregious enough that its  
23 opening offer to settle those claims was over \$100 million  
24 dollars.

25           So the notion that the YPF directors who are

1 sitting on those boards are going to have their hand in the  
2 plan process as to which the settlement agreement is the  
3 centerpiece, according to the Debtors, is just not tolerable  
4 to us. Now as a matter of history we were the ones who  
5 raised the bylaw issue the first time. Since that time we've  
6 only had two interactions with the Debtors. The Debtors'  
7 strategy has been let's just not deal with OCC, they're just  
8 going to be loudly protesting what we're doing, we'll deal  
9 with the Committee, but we raised the issue.

10           Since that time, the first time that we discussed  
11 this at that September meeting and made very clear to  
12 Morrison & Foerster if you don't have this issue resolved as  
13 of the time of the exclusivity hearing, they didn't file  
14 their motion for exclusivity yet to extend exclusivity, it's  
15 going to be an issue for us. We got no engagement all the way  
16 up to the time of the filing of the objection and only got a  
17 call afterwards at which point I was informed that the YPF  
18 board members were stepping down; that was going to be the  
19 resolution. The next thing we got were the bylaws that came  
20 across last night.

21           Now they don't fix the problem. I raise this  
22 because there's this notion that there's going to be an  
23 additional 30 day extension if these bylaws get fixed. I  
24 just predict that they're not going to get fixed here. This  
25 is why. The way this is set up right now, as Mr. Seife laid

1 out, is that the independents can come up with all their plan  
2 processes, but they have to propose it and it has to be  
3 resolved by the entire board. In other words, if we got into  
4 a situation in the next 60 days when the creditors Committee,  
5 all of the creditors and the independents came to the view  
6 that the best plan out there is a liquidating plan that just  
7 pushes off, outside of bankruptcy, the resolution of the  
8 claims. Under the bylaws that would still have to be  
9 presented to the YPF board, dominated board, to authorize the  
10 filing and solicitation of that plan.

11 So all the YPF board members have to do at that  
12 time is say it took us eight week, twelve weeks to get the  
13 bylaws done. It's very difficult to figure out how to do  
14 things in Argentina. We just can't really get to the issue  
15 of whether or not we should solicit a plan that is supported  
16 by the Creditors Committee, the independents and everybody  
17 else. So that's just kicking the can down the road to  
18 another exclusivity fight.

19 I get it, they agreed to 60 days now and maybe  
20 another 30 day consensual Evergreen adjournment, but unless  
21 they pull the YPF directors out of the process of the plan  
22 that is let the independents be truly independent, then we're  
23 just going to be back here in 60 days. Just want to manage  
24 expectations on that.

25 To go back to my analogy, what YPF is saying right

1 now is that they want to tout that they put the independent  
2 referees into watch the game, but they are reserving the  
3 right that if they disagree with the decision made by the  
4 referees on an issue even as important as the plan they  
5 reserve the right to cancel the game at any time; that is  
6 they can pocket veto a plan and run the entire process into a  
7 Chapter 7 because if they're being told that the creditors  
8 don't support the solution their next best attempt is going  
9 to be with a Chapter 7 trustee to try to get a Trustee to  
10 bite on a number that the creditors won't support.

11           If they want to stay in an 11 creditors are  
12 entitled to their day and 60 days is about as long as we can  
13 wait to get a plan, get it on file, get the disclosure  
14 statement approved, get the solicitation done, get the  
15 confirmation done and then go effective which requires  
16 transitioning off all those cites before the money runs out.

17           THE COURT: Thank you, Mr. Shore.

18           Let me just, before I hear a response, say I  
19 haven't seen the bylaws; no one sent them to me. I don't  
20 want to see them. They are, obviously, in negotiation and I  
21 don't want to get into the weeds about what they say or don't  
22 say, but I will say this which is something, I think, the  
23 lawyers who appear in front of me would agree. I have  
24 consistently been a vigorous advocate for independent robust  
25 authority for independent directors when they are facing

1 inter-company or any other kind of conflict and ended up  
2 costing the estate about \$80 million dollars at the end of  
3 the day, but it was the right thing to do and it ultimately  
4 led or has led to a settlement in that case and ultimately,  
5 at least one of the estates being or one side of the estates  
6 being confirmed.

7 I'm not jumping in. I don't know what the bylaws  
8 say, don't say. I don't want to get into a conflict over how  
9 Mr. Shore is interpreting them and whether that's right or  
10 not right, but I just want to say what I think everybody  
11 already knows which is that when you have a conflict  
12 situation you need vigorous robust procedures that allow  
13 independent decision makers to control how the Debtor  
14 proceeds. That is certainly something that I will support  
15 and even fight for in my cases. So I just thought I would  
16 put that on the record.

17 Mr. Peck, if you would like to -- we have a lot to  
18 do today so I don't want to spend too much more time on this  
19 because I have to be somewhere at three p.m. So we have a  
20 lot to do.

21 MR. PECK: Consistent with the time constraints  
22 and also with the comments just made I want to say a couple  
23 of things. First, the Debtors are as concerned about the  
24 governance issues that have been expressed by, at least,  
25 counsel for the Committee. I'm not going to endorse pretty

1 much anything that Mr. Shore just said, but the issues  
2 presented raise serious issues of case administration for us  
3 as professionals representing this estate. In a manner that  
4 has been personally uncomfortable for me I have, effectively,  
5 put myself in the middle of that and I have taken the  
6 position with the company that I'm only listening to the  
7 independent directors. That takes me only so far.

8           We need effective governance that leads to,  
9 effectively, that outcome, but up to this point, and I've  
10 said this to YPF, I've said this to the Committee and I said  
11 it in the September 8th meeting that was attended by Mr.  
12 Shore in our offices when he asked a very direct question.  
13 So who's going to decide the question of how the settlement  
14 agreement is going to be prosecuted. Who is going to decide  
15 questions relating to plan structure? I answered very  
16 directly, the independent directors.

17           Now what was my basis for saying that, because  
18 that's the only way that we can effectively represent the  
19 Debtors in this case? We can't be subjected to domination by  
20 YPF. We can't be in a situation in which there is a conflict  
21 that implicates the integrity of the Chapter 11 process. As  
22 Debtors' counsel we believe we owe that to this Court and to  
23 all stakeholders. We're doing the best we can in a difficult  
24 situation.

25           Now as far as what Mr. Harris said in reference to

1 how simple this plan is, actually not so simple. It's an  
2 oversimplification what he said. There are structuring  
3 issues. There are issues relating to governmental claims.  
4 The governmental bar date is mid-December. Sixty days only  
5 gets us to the point that we know what our claims are. So to  
6 suggest that this is something we've all done before is not  
7 quite right.

8           It is true that the settlement agreement  
9 represents a critical keystone in the plan process. Mr.  
10 Harris has talked about a toggle. We've talked about that  
11 with him. The fact that OCC, itself, is not sitting in a  
12 room with Mr. Harris is meaningless. OCC is the most vocal  
13 member of a three member Creditors Committee represented by  
14 competent professionals. I am confident their voice is being  
15 heard and expressed by the Committee.

16           So in short we hear you, we're part of the process  
17 of solving this, we think we're going to get there and if we  
18 don't there will be obvious consequences to the case.

19           THE COURT: Okay.

20           MR. PECK: The 60 days is a start. We hope we  
21 extend it beyond that by consent because governance is  
22 resolved in a manner that's satisfactory to parties and if  
23 it's not we reserve our rights to do what we have to do in  
24 Court to get the time that we need.

25           With that, I think we should turn it over to other

1 items on a compressed agenda including the services agreement  
2 that was referenced.

3 MR. SEIFE: If I may, Your Honor. Howard Seife  
4 again for YPF.

5 I feel like I do need to respond to some of the  
6 comments made because there's been a lot of mud thrown on YPF  
7 and a lot of it is based on incorrect facts and assertions.  
8 I think a little background, and I'll be brief, Your Honor.

9 THE COURT: I didn't hear any mud, I have to say.

10 MR. SEIFE: Allegations; in any event, I would  
11 like to address some of the background to the case that  
12 hasn't been expressed so far.

13 First of all, YPF has owned Maxus for over 20  
14 years. And during that 20 years, it has pumped \$1.4 billion  
15 dollars into the company so it can meet its obligations. Now  
16 Mr. Shore suggested that was a big thing enabling Maxus to  
17 pay its creditors including OXY throughout that period, but I  
18 think that's what a responsible parent does and did in this  
19 case.

20 During that period of time, Maxus performed over  
21 \$700 million dollars of remediation work for the benefit of  
22 OXY. It's not surprising that they were disappointed and  
23 concerned about the filing of the bankruptcy, because that  
24 support is coming to an end. But it's an end which YPF  
25 provided \$34 million dollars of subordinated financing for a

1 transition, which would be successful and without any blips  
2 in the road. Because these are OXY's obligation to  
3 remediate. They're the ones that acquired and merged with a  
4 company that had these environmental obligations and they're  
5 the ones that have been noted by the environmental  
6 authorities as being the primary party that needs to clean up  
7 the sites.

8           It's not Maxus. Maxus has a contractual  
9 indemnification, which until the date of its bankruptcy  
10 filing, it fully met and provided substantial support for  
11 remediation for the benefit of OXY. So it's not surprising  
12 that all of this support, which YPF provided for its  
13 subsidiary over the years must come to an end during the  
14 course of the litigation. The magistrate even commented why  
15 YPF was continuing to support its bankrupt and insolvent  
16 company while it was doing what it thought was the  
17 responsible thing.

18           The litigation, which was for the sole benefit of  
19 OXY, is now for the benefit of all the creditors to the  
20 estate. And the settlement will be for all creditors and not  
21 for OXY. And I'm sure that is something which OXY finds hard  
22 to swallow.

23           Some of the factual assertions by Mr. Shore are  
24 just incorrect. There are no directors on the Maxus or  
25 Jared's boards that date back to the alleged events that were

1 the subject of the litigation and piercing the corporate  
2 veil. That is absolutely not true. There are not four YPF  
3 directors. There are three YPF designated directors.

4 In their papers, they allege that YPF selected  
5 counsel for the independent directors. Again, totally false.  
6 It was completely the choice of the independent directors.  
7 There was no persuasion or pointing in any direction by YPF  
8 in that decision. There's suggestion that one of the  
9 independent directors was a colleague of mine at Chadbourne  
10 some years back. Again, absolutely not true. Mr. Nicholas,  
11 one of the independent directors, was an associate at  
12 Chadbourne, left 26 years ago, six years before I joined the  
13 firm.

14 So there are two sides to the story, Your Honor.  
15 There is an investigation being conducted by the Committee.  
16 The Committee will investigate whether the appointment to the  
17 independent directors was proper, whether their process was  
18 proper, whether their hiring of professionals was proper,  
19 whether they fully considered the merits of the lawsuit,  
20 whether they had a fully engaged counsel and experts to  
21 negotiate the settlement, and whether the settlement is an  
22 appropriate range.

23 All of those things, the Committee is looking at,  
24 and I'm sure they'll do a full and thorough job. The  
25 suggestion that discovery ended in 2011, again totally wrong.

1 The depositions continued into 2016, so there's no issue of  
2 stale information or productions here. So just want to  
3 highlight some of the factual inaccuracies in the  
4 presentation.

5 The fact that YPF has acted responsibly here in  
6 supporting Maxus and continues to do so. And we look forward  
7 to engaging with the parties to a consensual resolution of  
8 governance issues.

9 THE COURT: Okay. Thank you.

10 So I'll get an order under certification of  
11 counsel on exclusivity?

12 UNIDENTIFIED: Yes, Your Honor.

13 THE COURT: Okay. We're going to take a short  
14 recess, then we'll turn to the next item on the agenda.

15 (Recess taken at 12:15 p.m.)

16 (Proceedings resume at 12:25 p.m.)

17 (Call to order of the Court)

18 THE COURT: Please be seated. Let's give everyone  
19 just a moment to get situated.

20 Okay.

21 MR. WISHNEW: Good afternoon, Your Honor, Jordan  
22 Wishnew, Morris & Foerster, for the Debtors. Next matter on  
23 today's agenda is item six, the Debtors' motion for entry of  
24 an order approving a services agreement by and between Tierra  
25 Solutions and Occidental.

1           Your Honor, I'm pleased to report that using the  
2 break just now, we resolved the last limited objection. So,  
3 at this point, there are no objections going forward. Let me  
4 just make a brief presentation to point on the record how  
5 we've come to this point.

6           THE COURT: Okay.

7           MR. WISHNEW: So, Your Honor, the limited  
8 objections that were filed dealt with the objections concerns  
9 regarding Section 10 of the services agreement, which dealt  
10 with a limited exclusive royalty free license to use any and  
11 all site information.

12           To make clear to the parties that their rights to  
13 this information was not being limited, the Debtors and  
14 Occidental agree to two additions to the services agreement  
15 and two additional provisions to the order of approval.

16           The first agreement or the first change to the  
17 services agreement is in Section 9.1.2, subpart (3), which  
18 will read,

19           "The receiving party shall not be prevented,  
20 however, from using or disclosing information:  
21 sub (1) which already is or becomes published  
22 or, otherwise, publicly available through no  
23 breach of this agreement; subpart (2) which is  
24 already known to the receiving party at the time  
25 of disclosure as evidenced in writing; subpart (3)

1           which the receiving party is required by any  
2           applicable provision of any contract, law,  
3           regulation, administrative order or Court order to  
4           disclose; subpart (4) which the receiving party  
5           roughly learns from some source other than  
6           directly or indirectly from the disclosing party;  
7           or subpart (5) which was not, otherwise,  
8           confidential prior to the date of this agreement."

9           In addition, the following sentence will be added  
10          to Section 10 on the services agreement,

11                 "The exclusive license granted in this paragraph  
12                 does not prohibit the parties from complying with  
13                 any existing legal obligation to disclose site  
14                 information to any other person or entity pursuant  
15                 to any applicable provision of any agreement, any  
16                 regulation, any administrative or judicial order  
17                 or applicable law."

18           Finally, Your Honor, two additional paragraphs  
19          will be added to the order approving the motion.

20                 "First, nothing in the services agreement or,  
21                 otherwise, herein shall impair the ability of any  
22                 party in interest to invoke its own rights, if  
23                 any, to obtain site information, as that term is  
24                 defined in the services agreement, or to seek  
25                 discovery of other documents, information, or

1 materials as allowed by law. Any applicable  
2 provision of any agreement, regulation,  
3 administrative order, or Court order and all such  
4 rights are preserved."

5 Finally, Your Honor, the additional -- the second  
6 paragraph should be added to the order would be:

7 "All site information shall be preserved during  
8 dependency of these bankruptcy proceedings,  
9 notwithstanding any party in interest, document  
10 retention policies, or similar policies."

11 Finally, Your Honor, with regards to the limited  
12 objection filed by the Ashland Group, both the Debtors and  
13 Occidental will endeavor in the coming days to reach a  
14 consensual order, which we would present under certification  
15 to the Courts providing for a sharing of information sought  
16 by those parties related to operating unit three on the  
17 Passaic River.

18 And with that, I will turn the podium over to Ms.  
19 Patrick on behalf of Occidental, to the extent she has  
20 anything more to add.

21 THE COURT: Thank you.

22 MS. PATRICK: Good morning, Your Honor, Kathy  
23 Patrick for Occidental.

24 Occidental's position is twofold. First, that  
25 while the services agreement should not have been necessary

1 because all of the information subject to it is information  
2 Occidental was already entitled to receive by virtue of  
3 Debtors' admitted obligations to defend, indemnify and hold  
4 OXY harmless, we are pleased that as a result of the  
5 consistent and diligent effort of the Debtors' environmental  
6 professionals that we have reached this place.

7           Occidental is, obviously, not happy to have to pay  
8 for information it is entitled to receive by virtue of an  
9 obligation Debtors already owe. But having access to this  
10 information will help to effectuate the smooth transition of  
11 site; although, there are, as the Court knows from our  
12 pleading, ongoing issues.

13           As it pertains to the resolution with the Ashland  
14 Group, the resolution is essentially as follows. The consent  
15 order will provide that they can request the information that  
16 they have sought. And if they are entitled to receive it, it  
17 will be produced. If there is a dispute about the question  
18 whether the information sought is privileged or whether they  
19 are entitled to it, we will come back to the Court on short  
20 notice to resolve that so that this will not be prolonged.

21           It has taken considerable time to get here, but  
22 this agreement is beneficial to the estates. It brings in  
23 revenue that, frankly, we think the estates are not entitled  
24 to have to pay for data that we were supposed to get for  
25 free. But we're here, and we urge the Court, therefore, to

1 approve the agreement and to accept the settlement of a  
2 consent order.

3 Obviously, if other parties claim the same rights  
4 that the Ashland entities claim, there is no preference for  
5 Ashland, just as there is no preference for OXY. Everybody's  
6 rights are preserved. Our privileges are preserved. Their  
7 contractual rights, if any, are preserved. And we should now  
8 move forward and get this entered so we can go on and get it  
9 done. Thank you, Your Honor.

10 THE COURT: Thank you.

11 MS. SONGONUGA: For the record, Your Honor, good  
12 afternoon, Natasha Songonuga of Gibbons PC on behalf of what  
13 is now being termed the Ashland entities.

14 For purposes of identifying the entities, Your  
15 Honor, they're Ashland, Inc., ISP Chemical LLC, Mallinckrodt  
16 LLC, National-Standard LLC, Harris Corporation, Givaudan  
17 Fragrance Corporation, Hoffmann-La Roch Inc., and Tiffany and  
18 Company.

19 Your Honor, with me today is my colleague William  
20 Hatfield, and Bill's going to address, Your Honor, the need  
21 for the information. And we do agree with, as stated on the  
22 record by OCC, in terms of the fact that we have agreed to  
23 work out a consent agreement, Your Honor. I think what needs  
24 to be clarified is that that request for the information is  
25 simply whether it be an email or a letter to the Debtor

1 requesting -- that the data that we're requesting be produced  
2 and not a motion practice before this Court.

3 THE COURT: Okay. Thank you.

4 MR. HATFIELD: Good afternoon, Your Honor, William  
5 Hatfield.

6 I thank that Debtors' counsel and also Occidental  
7 for working out this issue with us. We look forward to this  
8 consent order. And I want to give you a little background on  
9 why this is necessary.

10 The Transition Services Agreement is designed to  
11 move all of the environmental obligations of the Debtors over  
12 to Occidental, but there's a hole in it. And there's a hole  
13 with respect to the Diamond Alkali site, which has four  
14 operable units.

15 Now each unit is a piece of the Diamond Alkali  
16 site. The first unit is the Upland site at 80-120 Lister  
17 Avenue. The second unit is the lower 8 miles, which you've  
18 heard about, the focus feasibility study, which Occidental  
19 has chosen to step up and to conduct a remedial design. That  
20 was just announced a couple of weeks ago, Your Honor.

21 The third unit is the lower 17 miles. There is a  
22 separate operable unit for the lower 17 miles. There is an  
23 agreement with the EPA called an Administrative Order on  
24 Consent that about 73 parties entered into in 2007. That is  
25 the subject of the cooperating parties groups. It's AROA,

1 which is a group agreement that bound those 73 parties  
2 together to conduct this comprehensive study, which has cost  
3 well over a \$100 million dollars and still continues today.

4           However, in 2012, Your Honor, the Debtors, Maxus  
5 and Tierra, as well as Occidental pulled out of the CPG group  
6 and stopped performing this Administrative Order on Consent,  
7 this 17 mile study. So there's a hole in the transition  
8 services agreement. The conduct of the study is no longer  
9 being continued by the Debtors or Occidental. But there's  
10 data that's been gathered by the Debtors on behalf of  
11 Occidental in Operable unit 4, Your Honor, which is the  
12 Newark Bay site. The Newark Bay study areas to the south of  
13 the Passaic River. It's the water body that receives the flow  
14 from the river on a daily basis.

15           So we've been looking for two things that are not  
16 privileged, Your Honor; just the data, the raw data that's  
17 gathered by the Debtors on behalf of Occidental that's  
18 necessary to conduct the modeling for Operable Unit 3 and 4.  
19 And this is all encompassed inside of another Administrative  
20 Order on Consent with the EPA that Occidental entered into in  
21 2004 for Newark Bay, which was amended in 2010.

22           So I just want to give the Court some background  
23 that the Transition Services Agreement, hopefully, amended by  
24 this consent order will allow for the orderly transition of  
25 information from the Debtors to the other parties that are

1 conducting the cleanups, both to OXY and to the cooperating  
2 parties group, as well as the Ashland Group.

3 If we have a dispute, Your Honor, about whether  
4 there's a right to this data or other public information that  
5 we're seeking in our papers, we hope to be before you whether  
6 it's in person or by a conference call, because it's very  
7 important that this data be provided, both to Occidental and  
8 to the extent that we're seeking data that's not privileged  
9 or not confidential to our group and to the cooperating  
10 parties group.

11 Thank you, Your Honor.

12 MR. WISHNEW: Your Honor, so unless you -- I  
13 apologize, Your Honor.

14 MR. DALE: Good afternoon, Your Honor, I'll be  
15 very brief. Charles Dale, K&L Gates; I represent the  
16 cooperating parties group.

17 I think Debtors' counsel has correctly recited the  
18 agreement that resolves our limited objection. We thank the  
19 Debtors and Occidental for working with us. And we too will  
20 work with the Ashland Group and the parties to resolve site  
21 information access. Thank you, Judge.

22 THE COURT: Thank you.

23 MR. WISHNEW: Your Honor, unless you have any  
24 additional questions, we will prepare an order and send under  
25 certification to the Court.

1 THE COURT: I have no questions.

2 The Court will approve the order when it receives  
3 it.

4 MR. WISHNEW: Thank you very much, Your Honor.  
5 I'd like to turn the podium over to my colleague, Alex  
6 Lawrence, to address the next matter on the agenda.

7 MR. LAWRENCE: Good afternoon, Your Honor, Alex  
8 Lawrence, counsel to the Debtors.

9 I'm here in connection with the last conference we  
10 had before the Court. The Court asked that we give a status  
11 update on environmental matters so that everybody would know  
12 where things stand with Maxus and Tierra's work in that area.

13 And we submitted a letter to the Court so that  
14 would be on the docket, so everyone would have access to it  
15 and could read it, and could give Your Honor a preview as  
16 well.

17 Today -- on the line, we have environmental  
18 counsel from Morrison & Foerster, Bob Falk and Bill  
19 Tarantino, but we also have Dave Rabbe who is the president  
20 of Tierra Solutions. Tierra is the affiliate of Maxus that  
21 does all the environmental remediation work. Occidental has  
22 its own affiliate, Glenn Springs, which does environmental  
23 work for Occidental.

24 And what we found, what we're trying to achieve  
25 here, Your Honor, is to have a system in place where the

1 engineers, the professionals from Tierra Solutions and from  
2 Glenn Springs can work together preferably without  
3 interference by counsel. It seems to work best when the  
4 professionals work together. And the first step in that,  
5 Your Honor, was to put the services agreement in place and  
6 we're pleased that that agreement is being put in place.

7           Even before that, though, Your Honor, we entered  
8 into on September 13th and there's already been four work  
9 orders under that services agreement and the parties are  
10 working collaboratively and understand well with those  
11 projects. In addition to that, Your Honor, we had a meeting  
12 with the creditors committee on September 8th. And at that  
13 meeting, the idea of having a transition working group where  
14 Occidental and Maxus and Glenn Springs and Tierra could meet  
15 and come up with a plan to transition projects from Tierra to  
16 Occidental.

17           We put in a place a plan to put that together.  
18 There's already been one meeting, a formation meeting between  
19 Mr. Rabbe and counterparts at Glenn Springs in Houston where  
20 they have put together certain proposals to move forward with  
21 that transition working group. And I understand their first  
22 meeting is going to be next week in which they're going to  
23 discuss transition, a transition agreement, how to move these  
24 projects, ultimately, from Tierra to OXY.

25           And my understanding and we've asked counsel from

1 OCC to let us know if they have any issues with how this is  
2 progressing. Our understanding is that it is progressing  
3 well. We've heard nothing about any disputes between Glenn  
4 Springs and Tierra or any issues in that regard. That things  
5 are progressing well with respect to these collaborative  
6 relationships.

7           There have also been some information requests,  
8 Your Honor. First off, on September 21, I believe it was,  
9 the Committee asked that the Debtors provide periodic reports  
10 on these remediation projects. They sent us a matrix that we  
11 were to complete for each of the sites. We've done that. We  
12 delivered them yesterday. It's hundreds of pages of  
13 materials. There's a matrix for each site. And then there's  
14 supporting material behind those matrices and those have been  
15 provided to the creditors committee. We also provided them  
16 to OCC and to the EPA, as well, Your Honor.

17           And the last point is the 2004 request. It was on  
18 Tuesday, October 4 that we received that request to provide  
19 certain information. We turned it around on October 14th, we  
20 provided a response. We also supplemented that yesterday  
21 with some additional information. And I understand that  
22 there was issue with respect to our estimate of future costs  
23 that remained outstanding. But my understanding from  
24 discussions with counsel from OCC is that they are going to  
25 adjourn their 2004 motion. So, hopefully, we'll be able to

1 work collaboratively with respect to getting whatever  
2 information they need.

3 I've offered Mr. Rabbe to speak to counterparts at  
4 Glenn Springs if they have any questions about our response  
5 and, hopefully, that will work itself out as well, Your  
6 Honor.

7 THE COURT: Thank you.

8 MR. LAWRENCE: Thank you.

9 THE COURT: Ms. Patrick.

10 MS. PATRICK: Your Honor, the concerns that we've  
11 had and that we continue to have are that, in general, it  
12 seems to require that Occidental invoke the processes of the  
13 Court in order to get access to information. And let me  
14 explain what I mean by that.

15 And as I explain what I mean by that, let me draw  
16 a distinction between the Debtors' environmental  
17 professionals, Mr. Rabbe, Mr. Tarantino. They have worked  
18 very diligently when they are permitted to do so to provide  
19 us with information. But it is balkanized information. It  
20 comes through piecemeal and haltingly. And at the level of  
21 the information that we need in order to plan for the  
22 transition of these sites and, importantly, resolve this  
23 case, it is halting.

24 The Court will remember on September 7th that we  
25 asked for and obtained a telephonic status conference to

1 request information on the environmental sites in general  
2 and, specifically, on the spend and what was being done under  
3 Tranche B. And as a result of that conference, the Court  
4 directed the Debtors to provide a report to the Court  
5 concerning the status of those sites because they are  
6 critical and of critical importance to the ongoing progress  
7 of these cases.

8           On September 21st, the committee sent a proposed  
9 reporting matrix to the Debtors to which the Debtors did not  
10 respond until last night at 7:00 p.m. In the meantime, the  
11 Debtors filed their motion to extend exclusivity in which  
12 they disclosed for the first time that they had "over 100  
13 remediation projects" under way.

14           The list, the budgets for Tranche B of the DIP,  
15 the list of sites were in the couple dozen range, not over  
16 100. And so Occidental filed a Rule 2004 request and asked  
17 for somebody to sit down under oath and say, yes, these are  
18 the sites. This is what it is.

19           And in response to that, the Debtors did not  
20 respond to that until October 14th when they sent some  
21 information, but still not a catalog of their liabilities.  
22 The liabilities that they purported to settle with YPF, the  
23 liabilities that are the most important liabilities in this  
24 case, and we didn't get that information until they  
25 supplemented it, again, late last night.

1           We have not had a chance to review it. But in  
2 view of the fact that they are providing it, we are going to  
3 adjourn the Rule 2004 request. But at a more fundamental  
4 level, Your Honor, the concern that Occidental continues to  
5 have is that the Debtors' approach to this issue has been  
6 don't worry, I got this. But they will not tell the Court  
7 what this is. Even as of last night, we do not know what  
8 those 100 remediation projects are. And we don't know what  
9 they're doing.

10           Now, there's a meeting scheduled for next week at  
11 which the technical people will meet and at which we hope to  
12 get further information. But the services agreement doesn't  
13 solve this issue. The services agreement doesn't permit us,  
14 in fact, to request information about the Tranche B funding.  
15 And so without just standing here complaining about it, Your  
16 Honor, the solution, I think, is this.

17           Let's have that meeting next week. Let's find out  
18 what the Debtors have in mind to facilitate the transition of  
19 these sites. If it resolves it, then we will inform the  
20 Court of that at the next omnibus hearing and, hopefully, we  
21 will have made considerable progress. But if it doesn't, we  
22 may need to come back to the Court because the concern that  
23 we have is that it has only been when Occidental has  
24 precipitated a hearing or request for a status conference  
25 that the Debtors have been forthcoming. And that is

1 regrettable and it is not a means by which you can ultimately  
2 effectuate an orderly transition.

3           So we are where we are, but as it pertains to the  
4 environmental status report that is the status. It has been  
5 pulling teeth, but we have got some teeth now. We don't have  
6 all of them. And we may need to come back to the Court as a  
7 consequence. Thank you, Your Honor.

8           THE COURT: Okay. Thank you.

9           Okay. So we'll continue the 2004 motion to the  
10 next hearing, which I believe is November 17th. Let's have  
11 an updated status report as well. I don't know if you  
12 necessarily would need to bring the principles of the Debtor  
13 for that hearing, but something in advance along the lines of  
14 Mr. Peck's letter would probably be very helpful for the  
15 Court.

16           And I continue to urge -- I know the Debtors have  
17 a lot of fires to put out, but this is an issue of public  
18 safety and is very important that it be resolved as smoothly  
19 as possible. And I fully expect -- and it sounds like many  
20 of the professionals are working very hard to make sure that  
21 happens, and I applaud them on all sides on those efforts.

22           Anything else?

23           UNIDENTIFIED: Your Honor, that concludes this  
24 morning's agenda. Thank you.

25           THE COURT: Very good. Thank you

1 UNIDENTIFIED: Now this afternoons.

2 THE COURT: Now this afternoon, yes. Thank you  
3 very much. We're adjourned.

4 (Proceedings conclude at 12:48 p.m.)  
5  
6  
7

8 CERTIFICATE  
9

10 I certify that the foregoing is a correct transcript from the  
11 electronic sound recording of the proceedings in the above-  
12 entitled matter.

13 /s/Mary Zajackowski  
14 Mary Zajackowski, CET\*\*D-531

October 21, 2016  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25